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## FISCAL IMPACT REPORT

SPONSOR Smith DATE TYPED 3/8/2005 HB \_\_\_\_\_  
 SHORT TITLE Critical Management Area Domestic Wells SB 451  
 ANALYST Aguilar

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		Indeterminate	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates HB 500  
 Conflicts with HB 285, SB 120

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Office of the State Engineer (OSE)  
 New Mexico Environment Department (NMED)  
 New Mexico Department of Agriculture (NMDA)  
 Attorney General's Office (AGO)  
 New Mexico Finance Authority (NMFA)

### SUMMARY

#### Synopsis of Bill

Senate Bill 451 provides the State Engineer authority to designate critical management areas (CMA) by special order under certain conditions. Within these critical management areas, the state engineer will have the authority to limit domestic well permits to no less than one-half of an acre foot per year unless an applicant discontinues use of an existing permitted well from within the critical management area or transfers a water right. Further, the State Engineer is directed to treat all domestic well applications in the same manner within each critical management area.

The bill also provides that in certain specified circumstances, persons required to transfer water rights pursuant to the new law may be exempted from the public notice requirements including those cases where the State Engineer determines that the change will not impair existing water rights, be contrary to the conservation of water or be detrimental to the public welfare.

SB 451 declares an emergency.

### Significant Issues

The state engineer reports the importance of limiting depletions within declared critical management areas and notes SB 451 does not require water rights transfers to be from within the CMA. Transfers of water rights from areas outside of the designated CMA will not be effective in controlling declines in the aquifer's water level, because allowing the transfer (change in point of diversion) of an existing water right into a new domestic well does not physically bring additional water into the affected aquifer.

SB 451 restricts the authority of the state engineer to limit the amount of water appropriated from each domestic well to no less than one-half of an acre-foot per year per household unless the applicant transfers an existing water right to the well. The Office of the State Engineer notes in certain areas of the state, wells may have to be restricted to amounts less than the proposed one-half acre-foot per year depending on aquifer or stream shortages.

While the popular notion is domestic wells are depleting aquifers at a rapid rate, the State Engineer notes studies performed indicate domestic wells are having a much more significant impact on the depletion of interstate streams. Individually, domestic wells have a relatively small impact but the collective impact is a growing concern. With domestic wells continuing to be a popular source of water, it is expected the combined impacts will increase with time.

At present, the Office of the State Engineer processes over six thousand domestic well applications annually with each well authorized to produce 3 acre feet of water. Although the state engineer's office conservatively estimates the average diversion of each well at .25 acre feet per well, total authorized production could reach 18,000 acre feet per year if all users pumped to capacity. This is an extraordinary situation, however the impact is clear.

### **PERFORMANCE IMPLICATIONS**

Provisions of SB 451 will allow the Office of the State Engineer to further meet constitutional mandates.

### **FISCAL IMPLICATIONS**

The State Engineer notes it processes an average of 6000 domestic well applications annually. Requiring the transfer of water rights for domestic wells would require additional FTEs, the level of which will depend on the degree to which the state engineer will exercise the provisions of the bill and available funding. The agency notes an indeterminate but potentially significant fiscal impact as a result.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB 451 is the duplicate bill to HB 500. HB500 is also related to Senate Bill 120 and House Bill 285.

SB 120 and HB 285 allow the State Engineer to deny a domestic well permit if the well is located in a critical management area unless an applicant obtains an individual water right. If an individual water right is required, the applicant must obtain an existing water right from within the critical management area and change the place or purpose of use of the water. SB 451 re-

places the ability of the State Engineer to deny a domestic well permit in a critical management area with the ability to limit the use of the domestic well to one-half acre-foot of water unless an applicant transfers existing water rights from within the critical management area to the new location, or the applicant discontinues the use of and caps an existing, permitted domestic well in that critical management area.

SB 451 also differs from SB120 and HB285 in that it adds language requiring the State Engineer to review a critical management area designation every 5 years to ascertain whether the critical management area continues to meet the criteria for designation.

## **TECHNICAL ISSUES**

The Environment Department suggests the addition of the following language for consideration by the Legislature:

Page 7, line 7, insert a new section.

The State Engineer may deny a permit for a domestic well in a critical management area where the department of environment determines that the proposed well would be located within the bounds of a body of contaminated ground water that is the subject of federal, state, or local regulation for the purpose of investigation and/or remediation to achieve water quality standards.

The Office of the State Engineer suggests the following amendments for consideration by the legislature:

Page 5, strike lines 22–24 and insert in lieu thereof: “notify persons on the list that new, revised or proposed regulations are available and may be requested from the state engineer. Such charges as will defray the expense incurred in preparation of copies and mailing shall be paid by the requestor.”

Comment: Sending copies automatically to a list of individuals may be an unnecessary expense.

Page 7 strike lines 16–19 and insert in lieu thereof: “Water rights transferred pursuant to this section shall retain the priority date of the transferred water right and are transferable to a new location or purpose of use subject to the provisions of Chapter 72 NMSA 1978.”

Comment: The reference to “water rights obtained” is unclear.

## **OTHER SUBSTANTIVE ISSUES**

Ground water is a precious resource in New Mexico. Approximately 90 percent of New Mexican’s rely on ground water for their drinking water needs. The Environment Department notes once the resource is contaminated it is no longer usable, and extremely expensive, time consuming and often difficult to clean up. The ability of the State Engineer to deny a domestic well permit if the ground water in the area is contaminated is a crucial authority the State Engineer needs to augment the New Mexico Environment Department in protecting the public health of well owners from polluted water supplies.

**PA/yr**